UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. JOSEPH AIELLO AND SONS, INC. Defendant.	Civil Action No.: 1:17-CV-0562 (FJS/CFH)

COMPLAINT

The United States of America, through its undersigned attorneys and at the request of the Secretary of Agriculture, alleges as follows:

INTRODUCTION

1. This is an action for civil penalties and injunctive relief under the Perishable Agricultural Commodities Act, 1930 (PACA), 7 U.S.C. § 499a *et seq*. PACA establishes a system of licensing and penalties for violations. PACA sets forth those entities that are required to be licensed by the Secretary of Agriculture, United States Department of Agriculture (USDA), in order to purchase or sell perishable commodities in interstate commerce above certain thresholds. Defendant, Joseph Aiello and Sons, Inc. (Aiello), has at all relevant times fallen within the statute's ambit yet it purchased and sold perishable commodities across state lines without holding a valid PACA license. Through this action, the United States seeks: (a) an injunction to prevent Aiello from committing further violations of the statutory requirement that it hold a valid and effective PACA license, and (b) to collect civil penalties for violations that Aiello has already committed.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to the PACA, 7 U.S.C. §§ 499c(a), 499h(d), and 499*l*, as well as 28 U.S.C. §§ 1331, 1345, and 1355.

3. This court has venue pursuant to 28 U.S.C. §§ 1391(b)(1)-(2) and 1395(a), because Aiello's principle place of business is located in the Northern District of New York. Additionally, many of the acts and omissions at issue in this action occurred within this district.

PARTIES

4. Plaintiff is the United States of America.

5. Aiello is a New York corporation, located at 90 Dongan Avenue, Albany, New York.

FACTS

6. On March 8, 1949, the USDA issued a license to Aiello authorizing the company to operate as a PACA wholesaler.

7. Aiello stopped paying its PACA licensing fees in 2009. Accordingly, the USDA terminated Aiello's PACA license effective March 8, 2009.

8. Subsequently, Aiello applied to the USDA for a new PACA license and was issued one on August 10, 2010. The USDA terminated Aiello's license, at the company's request, after Aiello's president, Joseph J. Aiello (Mr. Aiello), notified the USDA, on September 28, 2010, that his "business was being sold" and was no longer operating subject to the PACA.

9. The USDA later learned that Mr. Aiello did not end up selling his company, and that it continued to operate as a wholesaler, subject to the PACA, even though it no longer held a valid and effective PACA license. A subsequent USDA investigation revealed that, on 33 separate days from June 5, 2013 through September 15, 2014, Aiello purchased and sold perishable agricultural commodities in interstate commerce even though the company did not hold a PACA license.

10. On September 19, 2014, Mr. Aiello acknowledged to a USDA investigator that Aiello is a wholesale distributor of fruits and vegetables subject to the PACA's licensure requirement.

11. On September 23, 2014, the same USDA investigator visited Aiello and met with Mr. Aiello. The investigator and Mr. Aiello discussed the fact that Aiello is a wholesaler subject to the PACA, and that the company needed to apply for a license in order to purchase or sell fruits, vegetables, or other perishable commodities in interstate commerce. During this meeting, Mr. Aiello admitted that his company was operating subject to the PACA without a valid and effective license. The investigator explained that failure to comply with the PACA's licensing requirement could subject Aiello to monetary penalties.

12. The USDA has learned that, even after the September 23, 2014 meeting, Aiello continued to operate subject to the PACA without a valid and effective license. Accordingly, on August 3 and 4, 2016, the same USDA investigator met with Mr. Aiello to once again discuss the fact that Aiello is a wholesaler subject to the PACA. She explained during that meeting that the company was continuing to operate in violation of the PACA, which Mr. Aiello acknowledged.

13. As of the date of this filing, Aiello has not reapplied for or received a PACA license.

REQUEST FOR RELIEF

Wherefore, the United States of America respectfully requests that the Court:

a. Assess civil penalties in the aggregate amount of $12,400, by assessing a $1,200 for the first day the violation occurred (*i.e.,* June 5, 2013), and a $350 penalty for the 32 subsequent violations referenced above, as per by 7 U.S.C. § 499c(a) and 7 C.F.R. § 3.91(b)(iii).

b. Permanently enjoin Aiello, together with its owners, associates, agents, employees, servants, and assigns, from conducting business subject to the PACA without a valid and effective PACA license.

c. Award all costs associated with prosecuting this civil action, together with such other relief as the Court deems just and proper.

Respectfully submitted,

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